IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

1. S.B.Civil First Appeal No. 119/1989
(Municipal Council, Sriganganagar Vs. Dr. Shridhar Sharma & Anr.)
&
2. S.B. Civil First Appeal No. 141/1989
(Dr. Shridhar Sharma Vs. Municipal Council, Sriganganagar)

Date of judgment:- 25.10.2007

HON'BLE MR.JUSTICE SANGEET LODHA

Mr.Yashwant Mehta, for the appellant in Appeal No. 119/1989 and for the respondent no. 1 in appeal no. 141/1989.

Mr.Pawan Ojha appearing on behalf of Mr. S.G. Ojha counsel, for the respondent in appeal no. 119/1989 and for the appellant in appeal no. 141/1989.

BY THE COURT:-

Reportable

1. These appeals are directed against the judgment and decree dated 21.08.1989 passed by the learned Additional District Judge No. 2, Sriganganagar in Civil Suit No. 102/1985, whereby, the suit preferred by the plaintiff Dr. Shridhar Sharma (respondent in appeal no. 119/1989 and appellant in appeal no. 141/1989 herein) for compensation quantified at Rs. 15,000/-, has been decreed to the extent of Rs. 7,500/- against the defendant Municipal Council, Sriganganagar (appellant in appeal no. 119/1989 and respondent in Appeal No. 141/1989 herein). The plaintiff is aggrieved by the judgment and decree to the

extent its claim for compensation has been disallowed and so also by award of the interest @ 6% from the date of the filing of the suit till the recovery of the amount, instead of 10% claimed by him. The defendant has preferred the appeal aggrieved by the judgment and decree passed by the learned trial court whereby, the decree for payment of compensation to the tune of Rs. 7,500/- has been passed in favour of the plaintiff.

2. The brief facts of the case are that the defendant Municipal Council has constructed a small bridge over a `nala' near the shop of Suganchand Halwai at Sriganganagar. On 28th July, 1982 at about 8 p.m. the plaintiff, a Lecturer in Biology in Government College, Sriganganagar while passing through the said bridge on scooter met with an accident. It is alleged by the plaintiff that there was no sufficient arrangement for the light and therefore, while passing through the said bridge, he could not see the ditch near the chamber of the bridge and consequently, he could not keep the balance of the scooter and fell down on the road resulting in fracture in the bone of his right hand. It was alleged that on account of the fracture, his right hand was plastered for a period of two months. It was further alleged that the plaintiff suffered physical and mental agony as a result of the injuries sustained. He was deprived from performing his daily work. It was alleged that it was only on account of gross negligence on the part of the local authority and its failure to discharge its

duties for maintaining the road in proper condition and insufficiency of the light, the accident occurred. The plaintiff claimed compensation quantified at Rs.15,000/- from the defendants. Before filing the suit, the plaintiff served the defendant Muncipal Council, Sriganganagar so also the Agriculture Produce Market Committee, Sriganganagar raising demand for the compensation. The Market Committee was impleaded as party defendant in the suit for the reason that the road on which accident occurred falls within the Market Committee area. The amount of compensation quantified at Rs. 15,000/- was claimed by the plaintiff out of which Rs. 7,500/- were claimed as general damages and Rs. 7,500/- for the loss of pleasure.

3. The suit was contested by both the defendants by filing their separate written statement. The defendant–Municipal Council did not dispute the factum of injury sustained by the plaintiff. However, it was stated that there was adequate arrangement of the light and if the bridge was in broken condition to some extent then for that Municipal Council cannot be held liable. It was stated that the accident appears to have been occurred on account of negligence of plaintiff himself in driving the scooter. It was further stated that the Municipal Council had no information regarding any ditch on the bridge and there was sufficient light existing on the disputed road. It was

further pleaded that it may be that immediately before the accident, the road might have got damaged by passing of some heavy vehicle, therefore, no liability can be fastened on the defendant Municipal Council. The maintainability of the suit as against the Municipal Council was questioned on the ground that the concerned area falls within the jurisdiction of the Market Committee. The defendant also contested quantum of compensation. The receipt of the notice was also denied and it was contended that the suit is liable to be dismissed for want of prior notice to the defendant Municipal Council.

4. The defendant no. 2 Market Committee took the stand in its written statement that the road where the accident is alleged to have occurred belongs to Municipal Council and therefore, the Market Committee has no liability. However, the defendant no. 2 contested the claim on merits as well and while denying the incident for want of knowledge, alleged that the plaintiff has suffered the injuries on account of his own negligence and therefore, he is not entitled for any compensation.

5. On the basis of pleadings of the parties the learned trial court framed following issues for determination:-

> "1- क्या दिनांक 28-7-82 को प्रश्नगत पुलिया का एक भाग नगर परिषद की लापरवाही के कारण टूटा हुआ था ?
>
> -वादी
>
> 2- क्या दिनांक 28-7-82 को प्रश्नगत सड़क पर प्रकाश की व्यवस्था नहीं थी और ऐसी व्यवस्था का दायित्व प्रतिवादीगण पर था ?
>
> -वादी
>
> 3- क्या अन्धेरे में वादी को पुलिया का टूटा हुआ भाग नजर नहीं आया

जिस कारण वादी के स्कूटर का पहिया पुलिया के टूटे हुए भाग में फंस गया और वादी दुर्घटनाग्रस्त हुआ ?

-वादी

4- क्या वादी प्रतिवादीगण से 15,000/- रूपये क्षतिपूर्ति के रूप में पाने का अधिकारी है ?

-वादी

5- क्या जिस स्थान पर दुर्घटना हुई वह क्षेत्र कृषि उपज मण्डी समिति के क्षेत्र में पड़ता है और वहाँ सड़क की व्यवस्था का दायित्व नगर परिषद के साथ साथ कृषि उपज मण्डी समिति का भी है ?

6- क्या वादी अपनी लापरवाही के कारण दुर्घटनाग्रस्त हुआ और इस कारण प्रतिवादीगण उतरदायी नहीं है ?

- प्रतिवादीगण

7- अनुतोष ?

6ए- क्या वाद नोटिस धारा 271 राज. म्यू. एक्ट के अभाव में काबिल खारिज है।

- प्रतिवादी सं.1

6बी- क्या वाद अन्दर मियाद है।

-वादी"

6. In support of the case, the plaintiff Dr. Shridhar Sharma himself appeared as witness PW1 and got examined PW2 Ravindra Kataria, PW3 Om Prakash Gupta as witnesses. On behalf of the defendant, DW1 Narsingh Vishnoi, working as Light Inspector in the respondent Municipal Council appeared as witness. The plaintiff also produced documentary evidence viz. medical prescriptions (Ex.1,3 & 4), receipt of X-ray (Ex. 2), postal receipts (Ex. 6 & 7), A.D. (Ex. 8) and a copy of the notice (Ex.5) and the postal certificate (Ex.9).

7. After hearing counsels for the parties to the suit and due consideration of the evidence on record, the learned trial court arrived at the finding that the plaintiff had met with an accident as pleaded due to negligence on the part of the Municipal Council,Sriganganagar in maintaining the road and insufficiency

of the light at the place of occurrence. However, the learned Trial court found the plaintiff entitled for compensation quantified to Rs. 7500/-. Accordingly, the suit preferred by the plaintiff has been decreed as indicated above.

8. It is contended by the counsel appearing on behalf of the appellant-Municipal Council, Sriganganagar that the learned trial court has failed to examine the evidence on record in correct perspective. There was a glaring variance between the pleadings and the proof and on the basis of the evidence on record it was manifestly clear that the plaintiff has cooked up a false case against the defendant-appellant. It was contended that the plaintiff purports to depose about having sustained fractures and having been X-rayed and plastered but, neither any Radiologist was produced nor X-ray plate or even X-ray report was produced on record. According to the appellant until and unless X-ray plates and reports are produced and proved by the Radiologist, by establishing the identity of the victim, the injuries sustained cannot be said to have been proved. The appellant contended that there was nothing on record to establish the appellant's knowledge of existing damage to the road and thereafter omission to repair, therefore, no liability can be fastened on the appellant. The learned counsel contended that the road was sufficiently lighted therefore, it cannot be said that the appellant was in any manner negligent in discharge of its

duties. The learned counsel contended that the plaintiff has given three different numbers (registration mark) of the scooter on different stages which by itself creates doubt about the occurrence of the incident. The learned counsel contended that it cannot be ruled out that the road might have got damaged immediately before the accident by passing of some truck etc. Therefore, no negligence can be attributed to the defendant-Municipal Council.

9. Per contra, the learned counsel appearing for the plaintiff – respondent submitted that the factum of accident and existence of the ditch over the bridge has not even been disputed by the Municipal Council in its written statement. Even the injury sustained by the plaintiff on account of the accident occurred has not been disputed. Therefore, the plaintiff was not even required to lead the evidence on such issues. However, the plaintiff has been able to prove his case beyond doubt by producing cogent evidence on record which remains unrebutted. The learned counsel submitted the contentions sought to be raised by the appellant beyond the pleadings cannot be entertained. The learned counsel submitted that after examining the entire evidence on record the learned trial court has rightly arrived at the finding that the respondent council was negligent in maintaining the road and keeping sufficient arrangement of the light. The learned counsel contended that on the basis of the

material on record it stands aptly proved that the plaintiff met with the accident on account of negligence on the part of the Municipal Council and sustained the injuries alleged in consequence thereof. Arguing the appeal preferred by the plaintiff to the extent the claim was disallowed by the learned trial court, the learned counsel contended that on the facts and circumstances of the case, the compensation awarded by the learned trial court is inadequate and the plaintiff was entitled for the compensation as prayed for in the suit. The learned counsel contended that the learned trial court has also erred in awarding the interest on @ 6% only, in the normal course the rate of 12% should have been awarded.

10. I have considered the rival submissions and also perused the record.

11. At the outset, it is to be noticed that the specific averments made by the plaintiff in the plaint regarding the damaged condition of the road have not been specifically denied by the defendant in its written statement. The averments made in this regard in the plaint in para no. 4 of the plaint have been replied in the terms that "पुलिया का थोड़ा बहुत टूट जाने में नगर परिषद की कोई लापरवाही नहीं है।" It has been further stated in para no. 8 of the written statement that the defendant Municipal Council had received no report regarding damage to the bridge, it may be that immediately before the accident, on account of passing the

heavy vehicle, it might have got damaged. Thus, the damaged condition of the road having not been disputed by the defendant, no further proof was required to prove the fact that a ditch was existing on the bridge near the chamber at the relevant time. More over, the damage condition of the road stands proved by the oral deposition of the witnesses produced on behalf of the plaintiff. The factum of insufficiency of the light on the disputed road as on the date of the accident also stands proved from the testimony of the witnesses produced on behalf of the plaintiff. There is no evidence in rebuttal worth the name to establish that as on the date of the accident , arrangement of the sufficient light was there on the site of the accident. Regarding the contention of the learned counsel for the appellant that the plaintiff has given three different numbers(registration mark) of the scooter on the different stages, by itself creates doubt about the occurrence of the accident, suffice it to say that on account of small variance in the scooter number given by the plaintiff, it cannot be inferred that no incident had occurred. Of course, the plaintiff has not produced on record the X-ray plate and report showing that he has suffered the fracture in right hand but, he has produced the prescription of the doctor(Ex.4) working in Government Hospital, Sriganganagar whereby, the plaster was instructed to be removed and he has also produced on record the receipt of the x-ray(Ex.2) and the other medical prescription

(Ex.3). As a matter of fact, the injuries sustained by the plaintiff have also not been disputed by the defendant Municipal Council in its written statement. Moreover, as discussed above, the injuries sustained by the plaintiff also stands proved on the basis of the evidence on record.

Thus, the learned trial Court has committed no error in holding that the injuries sustained by the plaintiff as alleged stand proved.

12. It is contended on behalf of the Municipal Council that since it had no knowledge about the damaged condition of the road and it is quite possible that immediately before the accident the damage might have been caused on account of passing of some heavy vehicle through the bridge, no negligence can be attributed to it and it cannot be fastened the liability for payment of the compensation. It is to be noticed that as per the provisions of Section 98 of the Rajasthan Municipalities Act, 1959 (in short "the Act of 1959" hereinafter), the appellant is under an obligation to make reasonable provisions for lighting public streets, places and building, removing, constructing, altering and maintaining public streets etc. The appellant cannot escape its liability by pleading lack of knowledge or its inability to maintain the roads etc. Maintaining the roads in proper condition within the Municipal area is one of the principal duties assigned to the local authorities under the relevant statute. In my considered

opinion, such stands taken by the appellant Municipal Council only shows its lack of concern regarding the right of the denizens of the local area to enjoy peaceful and safe life, which deserves to be deprecated. Suffice it to say that duty of the defendant Municipal Council originates from the statutory provisions, and the breach of duty having established, the damage suffered by the plaintiff is direct consequence of the breach. A person, who negligently carries out a statutory duty, thereby inflicting damage cannot claim immunity from an action in tort.

Thus, on overall consideration of the material on record I am of the considered opinion that the accident has occurred only on account of perfidious negligence on the part of the appellant Municipal council in maintaining the roads and keeping the adequate arrangements of the light, and therefore, it cannot escape from its liability for compensation to the victim of the accident by pleading its ignorance about the existence of dilapidated condition of the road.

Thus, in view of the discussion above, the learned trial court has committed no error in deciding the issues no. 1, 2,3,6 in favour of the plaintiff and against the defendant. No arguments were advanced before this Court by the counsel for the appellant assailing the findings of the learned trial Court on issues no. 5, 6-A and 6-B.

13. Now, coming to the question of entitlement of the plaintiff to compensation as claimed it is to be noticed that the plaintiff has suffered a single injury and entire medical bill etc. stands reimbursed by the Government. It stands proved from the evidence on record that the plaintiff has suffered a fracture but, in absence of the injury report and x-ray report, the gravity of the injury sustained cannot be ascertained. Therefore, the compensation awarded by the learned trial court for physical and mental agony suffered by the plaintiff on account of single injury sustained appears to be adequate. The interest awarded by the learned trial Court exercising its discretion on the amount of compensation @ 6% also appears to be justified on the facts and in the circumstances of the case. Thus, the finding of the learned trial Court on issue no. 4 and 7 also does not warrant any interference by this Court in exercise of its appellate jurisdiction.

Thus, I do not find any merit in the appeal preferred by the defendant Municipal Council so also in the appeal preferred by the plaintiff.

In the result, both the appeals fail and same are hereby dismissed. No order as to costs.

(SANGEET LODHA),J.